

Matt Holohan

From: Matt Holohan
Sent: Wednesday, October 30, 2019 1:32 PM
To: 'Reid, Joseph P. (Perkins Coie)'
Cc: Millikan, Thomas N. (Perkins Coie); Klein, Andrew N. (Perkins Coie); PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely; Rob Brunelli; Tara K. Hawkes; Lori Brown; Howton, Skyler (Perkins Coie); Jeff Toler
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

There is nothing for the parties to brief regarding "the dispute about returns." HEB identified one claim term and one proposed construction that implicated returns and that term is confined to the '506 Patent. The parties agree that the term "in-store purchase" in the '506 Patent does not include returns. HEB's proposed claim construction for "in-store purchase" did not include a position that that term somehow impacts the '781 Patent. If HEB attempts to belatedly raise the issue of whether the '781 Patent excludes returns in its claim construction briefs, DRA will ask the Court to strike those arguments and seek any other appropriate relief.

Best regards,

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>
Sent: Wednesday, October 30, 2019 12:24 PM
To: Matt Holohan <mholohan@sheridanross.com>
Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie) <AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <SHowton@perkinscoie.com>; Jeff Toler <jtoler@tlgiplaw.com>
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Matt-

I'm afraid DRA's position doesn't resolve the issue as far as H-E-B is concerned, so the parties will just have to go ahead and brief the dispute about returns.

Thanks,

Joe

Joseph Reid | Perkins Coie LLP

PARTNER

11452 El Camino Real, Suite 300

San Diego, CA 92130-2080

D. +1.858.720.5764

F. +1.858.720.5864

E. JReid@perkinscoie.com



From: Matt Holohan <mholohan@sheridanross.com>

Sent: Tuesday, October 29, 2019 12:04 PM

To: Reid, Joseph P. (SDO) <JReid@perkinscoie.com>

Cc: Millikan, Thomas N. (SDO) <TMillikan@perkinscoie.com>; Klein, Andrew N. (PAO) <AKlein@perkinscoie.com>;

*Perkins Service H-E-B/DRA <PerkinsServiceHEB-DRA@perkinscoie.com>; Todd Blakely <tblakely@sheridanross.com>;

Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown

<lbrown@sheridanross.com>; Howton, Skyler (DAL) <SHowton@perkinscoie.com>; Jeff Toler <jtoler@tlgiplaw.com>

Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

1. Our position would be that the term "in-store purchase" does not include a return, but that it should otherwise be given its plain and ordinary meaning.

2. There are presently no infringement allegations as to the '506 Patent hinging on returns. The term "in-store purchase" does not appear in the asserted claims of the '781 Patent. Accordingly, the construction of "in-store purchase" as excluding returns does not impact DRA's infringement contentions.

Please let us know if you have further questions.

Best regards,

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>

Sent: Tuesday, October 29, 2019 12:56 PM

To: Matt Holohan <mholohan@sheridanross.com>

Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie)

<AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob

Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown

<lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <SHowton@perkinscoie.com>; Jeff Toler

<jtoler@tlgiplaw.com>

Subject: Re: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Matt-

Thanks for your email. A couple of clarifying questions so we can understand your position:

1) Are you agreeing to the entirety of our proposed construction, or are you alternatively asking us to agree that the term simply means "not a return" and nothing more?

2) With this offer, is DRA acknowledging that it will withdraw its infringement contentions under the claims of the '506 and '781 patents where DRA's allegations hinge on returns?

Please let us know. Depending on your answers, we can all figure out how to go forward on this.

Thanks,

Joe

On Oct 29, 2019, at 8:28 AM, Matt Holohan <mholohan@sheridanross.com> wrote:

Joe,

DRA is willing to agree that the term “in-store purchase” in the ‘506 Patent is “not a return.” As such, we do not believe the term needs to be briefed. Please confirm that HEB agrees.

Best regards,

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Matt Holohan <mholohan@sheridanross.com>

Sent: Monday, October 28, 2019 5:54 PM

To: Reid, Joseph P. (Perkins Coie) <jreid@perkinscoie.com>

Cc: Millikan, Thomas N. (Perkins Coie) <tmillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie) <aklein@perkinscoie.com>; perkinsserviceheb-dra@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <showton@perkinscoie.com>; Jeff Toler <jtoler@tgiplaw.com>

Subject: Re: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

Yes, that is correct.

Matt

On Mon, Oct 28, 2019 at 5:49 PM -0600, "Reid, Joseph P. (Perkins Coie)" <JReid@perkinscoie.com> wrote:

Matt-

Thanks for your email below. To clarify, regarding “module,” if it is given means-plus-function treatment, does DRA agree with H-E-B’s identifications of the functions involved, so that the only dispute is over structure?

Thanks,

Joe

Joseph Reid | Perkins Coie LLP

PARTNER

11452 El Camino Real, Suite 300

San Diego, CA 92130-2080

D. +1.858.720.5764

F. +1.858.720.5864

E. JReid@perkinscoie.com

<image001.jpg>

From: Matt Holohan <mholohan@sheridanross.com>
Sent: Monday, October 28, 2019 3:26 PM
To: Reid, Joseph P. (SDO) <JReid@perkinscoie.com>
Cc: Millikan, Thomas N. (SDO) <TMillikan@perkinscoie.com>; Klein, Andrew N. (PAO) <AKlein@perkinscoie.com>; *Perkins Service H-E-B/DRA <PerkinsServiceHEB-DRA@perkinscoie.com>; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (DAL) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

Following up on our call Friday afternoon, this confirms the parties' understanding that terms 13-18 in the chart you sent will not be briefed by the parties.

As discussed, DRA will maintain its position that all terms be given their plain and ordinary meaning. To crystallize the parties' disputes for the Court, DRA will propose the following modified HEB constructions as alternative constructions:

"spot-checking" - Plain and ordinary meaning. Alternatively, "inspecting either (1) a receipt, (2) purchased items, and/or (3) the token to verify the consumer's purchase."

"user of the retailer device" - Plain and ordinary meaning. Alternatively, "retail personnel, consumer, or other individual using the retailer device."

Regarding "first communication module," DRA's position is that the term is not a means plus function term. If the Court determines that it is a means plus function term, DRA disagrees that there is no corresponding structure for the functions identified by HEB. As explained on our phone call, the specification discloses at least the corresponding structure of "the service provider's web API" at Col. 26, lines 43-45.

Best regards,

Matthew C. Holohan
Special Counsel
SHERIDAN ROSS PC / Attorneys at Innovation
P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>
Sent: Friday, October 25, 2019 10:44 AM
To: Matt Holohan <mholohan@sheridanross.com>
Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie) <AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>
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Matt-

To help frame our meet & confer today, we've gone ahead and prepared the attached chart, juxtaposing our respective proposed constructions for each term. Looking forward to talking with you at 3pm Pacific.

Thanks,

Joe

Joseph Reid | Perkins Coie LLP

PARTNER

11452 El Camino Real, Suite 300

San Diego, CA 92130-2080

D. +1.858.720.5764

F. +1.858.720.5864

E. JReid@perkinscoie.com

<image001.jpg>

From: Matt Holohan <mholohan@sheridanross.com>

Sent: Thursday, October 24, 2019 12:34 PM

To: Reid, Joseph P. (SDO) <JReid@perkinscoie.com>

Cc: Millikan, Thomas N. (SDO) <TMillikan@perkinscoie.com>; Klein, Andrew N. (PAO)

<AKlein@perkinscoie.com>; *Perkins Service H-E-B/DRA <PerkinsServiceHEB-DRA@perkinscoie.com>;

Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K.

Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (DAL)

<SHowton@perkinscoie.com>; Jeff Toler <JToler@tlgiplaw.com>

Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Just me. Please call my desk. Thanks.

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>

Sent: Thursday, October 24, 2019 9:38 AM

To: Matt Holohan <mholohan@sheridanross.com>

Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie)

<AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely

<tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes

<thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie)

<SHowton@perkinscoie.com>; Jeff Toler <JToler@tlgiplaw.com>

Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Thanks. Will it just be you, or do we need a dial-in number?

Joseph Reid | Perkins Coie LLP

PARTNER

11452 El Camino Real, Suite 300

San Diego, CA 92130-2080

D. +1.858.720.5764

F. +1.858.720.5864

E. JReid@perkinscoie.com

<image001.jpg>

From: Matt Holohan <mholohan@sheridanross.com>
Sent: Thursday, October 24, 2019 8:35 AM
To: Reid, Joseph P. (SDO) <JReid@perkinscoie.com>
Cc: Millikan, Thomas N. (SDO) <TMillikan@perkinscoie.com>; Klein, Andrew N. (PAO) <AKlein@perkinscoie.com>; *Perkins Service H-E-B/DRA <PerkinsServiceHEB-DRA@perkinscoie.com>; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (DAL) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

That's fine.

Matt

Matthew C. Holohan
Special Counsel
SHERIDAN ROSS PC / Attorneys at Innovation
P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>
Sent: Thursday, October 24, 2019 7:03 AM
To: Matt Holohan <mholohan@sheridanross.com>
Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie) <AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Matt-

Something has come up on our end at 2—can we bump to 3pm Pacific?

Thanks,

Joe

Joseph Reid | Perkins Coie LLP
PARTNER
11452 El Camino Real, Suite 300
San Diego, CA 92130-2080
D. +1.858.720.5764
F. +1.858.720.5864
E. JReid@perkinscoie.com
<image001.jpg>

From: Matt Holohan <mholohan@sheridanross.com>
Sent: Wednesday, October 23, 2019 11:39 AM
To: Reid, Joseph P. (SDO) <JReid@perkinscoie.com>
Cc: Millikan, Thomas N. (SDO) <TMillikan@perkinscoie.com>; Klein, Andrew N. (PAO) <AKlein@perkinscoie.com>; *Perkins Service H-E-B/DRA <PerkinsServiceHEB-DRA@perkinscoie.com>;

Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (DAL) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>

Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Joe,

I'm free at 2 Pacific so please call me at that time. Thanks.

Matt

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Reid, Joseph P. (Perkins Coie) <JReid@perkinscoie.com>

Sent: Wednesday, October 23, 2019 9:12 AM

To: Matt Holohan <mholohan@sheridanross.com>

Cc: Millikan, Thomas N. (Perkins Coie) <TMillikan@perkinscoie.com>; Klein, Andrew N. (Perkins Coie) <AKlein@perkinscoie.com>; PerkinsServiceHEB-DRA@perkinscoie.com; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; Lori Brown <lbrown@sheridanross.com>; Howton, Skyler (Perkins Coie) <SHowton@perkinscoie.com>; Jeff Toler <JToler@tligiplaw.com>

Subject: Re: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Matt-

Thanks for checking in. I'll investigate the reflector issue. For our meet and confer, we can be available Friday afternoon after 1pm Pacific.

Thanks,

Joe

On Oct 23, 2019, at 10:05 AM, Matt Holohan <mholohan@sheridanross.com> wrote:

Dear Counsel,

I got a bounce-back from the Perkins Coie email address that was copied on the email I responded to. Please provide your availability.

Best regards,

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Matt Holohan

Sent: Tuesday, October 22, 2019 9:11 AM

To: 'Zekan, Karen (Perkins Coie)' <KZekan@perkinscoie.com>; Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; jtoler@tlgiplaw.com; bjohnson@tlgiplaw.com
Cc: InternalH-E-B/DRA@perkinscoie.com
Subject: RE: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Dear Counsel,

Please provide your availability for a meet and confer regarding claim construction this week.

Best regards,

Matthew C. Holohan

Special Counsel

SHERIDAN ROSS PC / Attorneys at Innovation

P 303.863.2974 (d) / F 303.863.0223 / www.sheridanross.com

From: Zekan, Karen (Perkins Coie) <KZekan@perkinscoie.com>

Sent: Friday, October 11, 2019 7:51 PM

To: Todd Blakely <tblakely@sheridanross.com>; Rob Brunelli <rbrunelli@sheridanross.com>; Matt Holohan <mholohan@sheridanross.com>; Tara K. Hawkes <thawkes@sheridanross.com>; jtoler@tlgiplaw.com; bjohnson@tlgiplaw.com

Cc: InternalH-E-B/DRA@perkinscoie.com

Subject: Digital Retail Apps, Inv. v. H-E-B, LP - Defendant's Preliminary List of Proposed Claim Constructions

Counsel:

Attached is Defendant H-E-B, LP's Preliminary List of Proposed Claim Constructions.

Best regards,

Karen Zekan | Perkins Coie LLP

LEGAL PRACTICE ASSISTANT

11452 El Camino Real, Suite 300

San Diego, CA 92130-2080

D. +1.858.720.5740

F. +1.858.720.5799

E. KZekan@perkinscoie.com

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